IN THE HIGH COURT OF JUDICATURE AT BILASPUR, C.G.

WRIT PETITION NO. 3391 /2003

(Petition under article 227 of the Constitution of India)

PETITIONER : Jugal Kishore Agrawal, S/o Vinod Kumar Agrawal, aged about 21 years, occupation life time member of Indian Red Cross Society, Raigarh, R/o Gauri Shankar Mandir Road Raigarh, Tahsil and Distt. Raigarh (C.G.)

VERSUS

RESPONDENTS : 1) Second Additional District Judge to the Court District Judge, Raigarh, Distt. Raigarh (C.G.)

2) 4th Civil Judge Class –II Raigarh to the Court of District Judge Raigarh, Distt. Raigarh (C.G.)

3) Indian Red Cross Society, Distt. Branch Raigarh, through its president Indian Red Cross Society, Distt. Branch Raigarh, (C.G.)

P. R. No. 8356/03
Presented by Shri R.K.N. Rai Kulkarni
dated 12.09.03

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT OF MANDAMUS/ CERTIORARI

(191)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Writ Petition No.3391 of 2003

Jugal Kishore Agrawal

- Versus -

Second Additional District Judge, Raigarh and others.

POST FOR ORDER ON 8th JANUARY, 2004

Sd/-
L.C.BHADOO
Judge

8.1.2004

(192)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Writ Petition No.3391 of 2003

Jugal Kishore Agrawal

- Versus -

Second Additional District Judge, Raigarh and others.

Present: -

Shri Vishnu Koshta, Advocate: For the petitioner.

ORDER

(Passed on 8th. January, 2004)

As per L.C. Bhadoo J.

The petitioner has preferred this writ petition under Article 227 of the Constitution of India challenging the order dated 24-2-2003 passed by the Second Additional District Judge, Raigarh, in Civil Appeal No.08/2003 and order dated 7-2-2003 passed by the 4th Civil Judge, Class-II, Raigarh in Civil Suit No. 22-A/2003 whereby both the courts rejected the application of the petitioner filed under Order 39 Rule 1 & 2 of the Code of Civil Procedure for granting temporary injunction during the pendency of the Civil Suit for declaration and permanent injunction against the respondent.

2. Facts leading to filing of this writ petition are that the petitioner herein filed a suit for declaration and permanent injunction along with an application for grant of temporary injunction against respondent No.3 on the ground that respondent No.3 has violated the Government's orders dated 3-3-95, 4-2-98 and 13-2-98 and also violated the order of the High Court of Madhya Pradesh passed in Misc. Petition No.2260/1991 directing that the medical shop situated in the premises of the

hospital building should be run by the Indian Red Cross Society or by Super Market and should not be given to any other agency or private person.

3. The petitioner's allegations are that in contravention of the above High Court and Government's orders respondent No.3 has given the medical shop situated at Kirodimal District Hospital premises, Raigarh on contract to a private person which is violative of the above High Court and Government's directions, whereas the reply of respondent No.3 was that the shop has not been given on contract to third person, but in order to run the shop and for supervision of the shop respondent No.3 issued an advertisement and invited applications in order to appoint a Director. The advertisement was not issued to give the shop in question on contract basis and the advertisement was issued that the shop will be run by the Director under the Rules and Regulations of respondents' society. The Director was asked to submit the Bank Guarantee because some stock of the valuable medicines is there in the shop. Therefore, as a security of value of medicines Bank Guarantee and solvency certificate were asked by respondents from that Director so that if any loss is incurred that will be recovered from that Director. It is incorrect to say that they propose to give the shop on any contract. The Director is appointed in order to supervise and manage the sale and purchase of the medicines on daily basis. It is incorrect to say that the shop is being given to any private person for running the shop. On the contrary, the said medical shop will be kept open for 24 hrs for selling medicines to the needy persons.

4. I have heard the learned counsel for the petitioner on admission.

5. The learned counsel for the petitioner submitted that as per the advertisement the shop in question is being given on contract to third person which is contrary to the High Court and Government's orders as mentioned above.

6. I have perused the trial Court's order as well as the Appellate Court's order and both the Courts have reached the conclusion that the petitioner has not been able to prove prima facie case in his favour nor he has been able to show the balance of convenience in his favour nor he has been able to prove that in case his application is rejected he would suffer irreparable injury. Both the Courts reached the conclusion that the shop is not being given to any private person on contract, rather respondent No.3 has issued notification for appointment of the Director to run the medical Shop.

7. The learned counsel for the petitioner drew the attention of the Court towards the rules and regulations of respondent No.3 Society regarding running of the shop. A perusal of these rules and regulations shows that the medical shop is to be kept open for sale of medicines 24 hrs and other conditions have been laid down for proper functioning of the shop. There is provision that at the time of taking over the charge of the shop the Director will furnish a Bank Guarantee of Rs.20 lakhs and an undertaking and in case of the breach of the conditions, rules and regulations of the agreement and in case of any loss is occurred in the shop business then that will be recovered from the Bank Guarantee of Rs.20 lakhs. It has been further mentioned that the drug licence of the shop will be in the name of the Indian Red Cross Society, District Raigarh and the shop will not be closed in any condition. If the Director has to go out then he has to make alternative arrangement and further the duties of the Director has been mentioned in these rules and regulations. It has further been mentioned that the Director will be entitled for

monthly salary and all the stock of medicines will be the property of the Red Cross Society. Therefore, looking to the reply of respondent No.3 and rules and conditions prepared by respondent No.3 for running of the medical shop shows that the medical shop situated at Kirodimal, District Hospital, Raigarh primarily and mainly will run under the control and supervision of respondent No.3 Indian Red Cross Society.

8. In view of the above facts and circumstances, in my opinion the trial Court as well as the Appellate Court has not committed any illegality or irregularity in coming to the conclusion that the petitioner has not been able to make out prima facie case that the medical shop in question is being given to a third party on contract basis and that shop will not be run by respondent No.3 Indian Red Cross Society. Similarly, the petitioner has not been able to prove the balance of convenience in his favour and irreparable injury caused to him.

9. In view of the above, I am of the opinion that the petitioner has not been able to make out a case to interfere with the orders of the trial Court as well as Appellate Court under Article 227 of the Constitution of India, as both the Courts have not either exceeded their jurisdiction nor their orders are contrary to the settled principles of law nor they have exercised jurisdiction which does not vest in them.

10. In the result, I do not find any illegality and infirmity in the orders of both the Courts. The writ petition is liable to be dismissed at the admission stage itself. The petition is accordingly dismissed. However, cost is made easy.

Sd/-
L.C.BHADOO
Judge
08-01-2004

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